

NOTICE OF INTENT

Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division

Severe Ozone Nonattainment Area Major Source Fee (LAC 33:III.209) (AQ238)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.209 (Log #AQ238).

This proposed rule establishes the methodology for computation of a federally-required fee on major sources in the five-parish Baton Rouge severe ozone nonattainment area. The fee will be assessed on major sources that emit 25 tons per year or more of volatile organic compounds (VOC) or oxides of nitrogen (NO_x) and that are located in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge. The fee is required by Sections 185 and 182(f) of the Clean Air Act and will be assessed to major sources if the five-parish Baton Rouge ozone nonattainment area fails to achieve attainment with the one-hour ozone air quality standard by November 2005. This proposed rule fulfills a Clean Air Act requirement for the five-parish Baton Rouge ozone nonattainment area under the current classification of severe. The rule will be included in a revision to the attainment State Implementation Plan (SIP) that must be submitted to the Environmental Protection Agency by June 23, 2004. Failure to promulgate the proposed rule to establish nonattainment area major source fees would cause the SIP submittal to be deemed incomplete. The basis and rationale for this rule are to satisfy requirements specified in Section 185 and Section 182(f) of the federal Clean Air Act.

This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on March 26, 2004, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room C111, 602 N. Fifth Street, Baton Rouge, LA 70802. The hearing will also be for the revision to the SIP to incorporate this proposed rule. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith Schuerman at the address given below or at (225) 219-3550. Free parking is available across the street in the Galvez parking garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ238. Such comments must be received no later than April 2, 2004, at 4:30 p.m., and should be sent to Judith Schuerman, Office of Environmental Assessment, Environmental Planning Division, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or to FAX (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ238.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292;

State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.louisiana.gov/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 2. Rules and Regulations for the Fee System of the Air Quality Control Programs

§209. Annual Fees

A. ...

B. All parties conducting activities for which the Clean Air Act Amendments of 1990 Section 185 fees apply shall be subject to the payment of such fees by the due date indicated on the invoice. Except as provided for in Paragraph B.1 of this Section, any owner or operator of a major stationary source that is located in the Baton Rouge Severe Nonattainment Area (Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes) shall pay a fee in accordance with Paragraph B.3 of this Section beginning in 2007 and in each calendar year thereafter until the Baton Rouge Nonattainment Area achieves attainment with the 1-hour National Ambient Air Quality Standard for ozone (40 CFR 50.9), or until the U.S. EPA revokes the 1-hour ozone standard.

1. Exemptions

a. No major stationary source shall be required to pay fees required by this Subsection for emissions that occur during an extension year granted by the EPA administrator according to Section 181(a)(5) of the Clean Air Act.

b. Any emissions unit that begins initial operation after the attainment year shall not be subject to the requirements of this Subsection.

c. Any emissions unit that meets the *clean emissions unit* criteria shall not be subject to the requirements of the Subsection.

2. Definitions. All terms used in this Section, unless the context otherwise requires or unless specifically defined in the Louisiana Environmental Quality Act or in other regulations promulgated by the secretary of the department or his predecessor, shall have their usual meanings, except for those terms specifically defined as follows.

Attainment Year—the calendar year that the Baton Rouge Nonattainment Area is required to reach attainment of the 1-hour national ambient air quality ozone standard.

Baseline Amount—the yearly average of the sum of actual volatile organic compounds (VOC) and nitrogen oxides (NO_x) emitted from nonexempt units during any three years from 1998 through 2002. The *baseline amount* shall be determined in accordance with Paragraph B.3 of this Section.

Clean Emissions Unit—an emissions unit that meets one of the following criteria:

i. is equipped with an emission control technology with a minimum control efficiency of at least 95 percent; or

ii. is equipped with emission control technology that meets the requirements for Best Available Control Technology (BACT).

Major Stationary Source—any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 25 tons per year of either VOC or NO_x.

3. Baseline Determination. Facilities shall identify the three years that are most representative of normal operations to be used in the calculation of the baseline amount. The identification will be submitted with the annual emissions inventory submitted in accordance with LAC 33.III.919 for the calendar year 2007.

4. Fee Requirements

a. For VOC and NO_x, each major stationary source shall be assessed an annual fee payable to the department in accordance with LAC 33:III.215. The fee shall be calculated as follows:

$$\text{Fee} = [A - (0.8 \times B)] \times C$$

where:

A= the sum of VOC and NO_x emissions in tons per year actually emitted during the previous calendar year.

B= the baseline amount.

C= a fee of \$5000 per ton, adjusted by the Consumer Price Index in accordance with Section 185 of the Clean Air Act, as amended [42 USC 7511d(b)(3)].

b. If the sum of VOC and NO_x emissions (A) is less than or equal to 80 percent of the baseline amount (B), the fee shall be set to zero.

c. By the end of calendar year 2007 and each year thereafter, the department shall assess a fee for emissions in the previous calendar year.

d. By the due date indicated on the invoice and each year thereafter, each facility subject to this Subsection shall remit the assessed fee to the department in accordance with LAC 33:III.215. See LAC 33:III.217 for late payment fees. See LAC 33:III.219 for action taken regarding nonpayment of the fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:611 (September 1988), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:17 (January 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:264 (February 2000), LR 30:

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

LOG #: AQ238

Person

Preparing

Statement: James J. Orgeron, Jr.Phone: (225) 219-3578Dept.: Department of Environmental QualityOffice: Office of Environmental Assessment

Return

Address: P.O. Box 4314Baton Rouge, LA 70821-4313

Rule

Title: Severe Ozone NonattainmentArea Major Source Fees(LAC 33:III.209)

Date Rule

Takes Effect: Upon Promulgation

SUMMARY

(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no estimated implementation costs or savings to state or local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Promulgation of this proposed rule establishes the federally-required fees for major industrial sources of ozone-forming emissions located in the Baton Rouge severe ozone nonattainment area. This proposed rule could result in an estimated increase in state revenues of approximately \$85,000,000 per year (based upon the 2002 annual emissions inventory) beginning at the earliest in 2007, should the Baton Rouge area fail to achieve the one-hour ozone air quality standard by November 2005.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

Should the Baton Rouge nonattainment area fail to achieve the ozone air quality standard by November 2005, estimated fees to be assessed to industry located in the parishes of Ascension, East Baton Rouge, Iberville, Livingston and West Baton Rouge would total approximately \$85,000,000 annually.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

All major source facilities located in the five-parish nonattainment area would have to comply with the same rules, so competition in the five-parish nonattainment area would not be affected. Competition with facilities located outside the nonattainment area could be affected. Every facility in the nonattainment area would have the option of reducing emissions to avoid or reduce the fee. Some facilities might shut down instead of paying the proposed fees, which would reduce employment.

Signature of Agency Head or DesigneeJames H. Brent, Ph.D., Assistant Secretary

Typed Name and Title of Agency Head or Designee

LEGISLATIVE FISCAL OFFICER OR
DESIGNEE

Date of Signature

Date of Signature

LFO 7/1/94

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

The revision to LAC 33:III.Chapter 2 establishes the methodology for computation of a federally-required fee on major sources in the five-parish Baton Rouge severe ozone nonattainment area. The fee will be assessed on major sources that emit 25 tons per year or more of volatile organic compounds (VOC) or oxides of nitrogen (NO_x) and that are located in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge. The fee is required by Sections 185 and 182(f) of the Clean Air Act and will only be assessed to major sources if the five-parish Baton Rouge ozone nonattainment area fails to achieve attainment with the one-hour ozone air quality standard by November 2005.

- B. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

This proposed rule fulfills a Clean Air Act requirement for the five-parish Baton Rouge ozone nonattainment area under the current classification of severe. The rule will be included in a revision to the attainment State implementation Plan (SIP) that must be submitted to the Environment Protection Agency by June 23, 2004. Failure to promulgate the proposed rule to establish nonattainment area major source fees would cause the SIP submittal to be deemed incomplete.

- C. Compliance with Act II of the 1986 First Extraordinary Session

(1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No increase in expenditure of funds is expected.

2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) ____ Yes. If yes, attach documentation.

(b) ____ No. If no, provide justification as to why this rule change should be published at this time.

No increase in expenditures of funds is expected.

FISCAL AND ECONOMIC IMPACT STATEMENT**WORKSHEET****I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED**

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY 03-04	FY 04-05	FY 05-06
PERSONAL SERVICES	0	0	0
OPERATING EXPENSES	0	0	0
PROFESSIONAL SERVICES	0	0	0
OTHER CHARGES	0	0	0
EQUIPMENT	0	0	0
TOTAL	0	0	0
MAJOR REPAIR & CONSTR.	0	0	0
POSITIONS (#)	0	0	0

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

No costs or savings to state agencies are expected from the proposed action.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 03-04	FY 04-05	FY 05-06
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
DEDICATED			
FEDERAL FUNDS			
OTHER (Specify)			
TOTAL	0	0	0

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

The department currently has sufficient funds to implement the proposed action.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

There is no anticipated impact of the proposed action on local government units.

2. Indicate the sources of funding of the local governmental unit which will be affected by these costs or savings.

No funding sources of local government are affected by the proposed action.

FISCAL AND ECONOMIC IMPACT STATEMENT**WORKSHEET****II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS**

A. What increase (decrease) in revenues can be anticipated from the proposed action?

REVENUE INCREASE/DECREASE	FY 03-04	FY 04-05	FY 05-06
STATE GENERAL FUND	0	0	0
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS			
LOCAL FUNDS			
TOTAL	0	0	0

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

The federally-required fee on major sources located in the parishes of Ascension, East Baton Rouge, Iberville, Livingston and West Baton Rouge will not be assessed unless the five-parish Baton Rouge nonattainment area fails to achieve attainment of the one-hour ozone standard by November 2005. The earliest that the fee would be assessed is 2007.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

If the Baton Rouge area fails to attain the one-hour ozone standard by November 2005, major sources, i.e., about 140 facilities in the five-parish area (Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes) permitted to emit 25 tons per year or more of VOC or NOx will be required to remit a fee on emissions that are in excess of 80 percent of the base year emissions. Some additional internal forms and workload adjustments may be required by the industry in the area. Some facilities may close or suspend operations due to the impact of the fee.

- B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

Based upon an estimate using the 2002 annual inventory of emissions, such fees would total approximately \$85,000,000 per year.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

All major source facilities located in the five-parish nonattainment area would have to comply with the same rules, so competition in the 5-parish nonattainment area would not be affected. Competition with facilities located outside the nonattainment area could be affected. Every facility would have the option of reducing emissions to avoid or reduce the fee. Some facilities might shut down instead of paying the proposed fees, which would reduce employment.